

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PENTAIR WATER POOL AND SPA)
INC.,)

Plaintiff(s),)

v.)

FIBERSTARS INC.,)

Defendant(s) .)

No. C 05-1391 WHA (BZ)

**SETTLEMENT CONFERENCE
ORDER - PATENT CASE**

The above matter was referred to me for settlement purposes.

On August 3, 2005, I conducted a telephonic hearing at which both sides were represented by counsel. With the consent of the parties and good cause appearing, **IT IS HEREBY ORDERED** that no later than **August 25, 2005**, Scott Lewis, President of plaintiff, and Robert Conners, CFO of defendant, shall meet in person, preferably outside the presence of counsel, to discuss a resolution of this dispute. They shall meet in **Los Angeles, California** or in any other place to which they both agree. The

1 principals are urged to explore a creative, business resolution
2 of their dispute. If the case settles, the parties are to
3 notify the Court immediately.

4 Each party shall provide the other informally,
5 expeditiously and pursuant to Federal Rule of Evidence 408 with
6 all information reasonably needed to further the progress of
7 the settlement negotiations. Confidential information may be
8 provided subject to a protective order.

9 If there is no settlement, it is **ORDERED** that a telephonic
10 conference is scheduled for **September 1, 2005 at 4:00 p.m.**, to
11 discuss the status of the negotiations. Counsel for plaintiff
12 shall get counsel for defendant on the line and call chambers
13 at 522-4093. The principals need not participate.

14 It is further **ORDERED** that on **September 1, 2005** a
15 Settlement Conference will be scheduled, to occur in Courtroom
16 G, 15th Floor, Federal Building, 450 Golden Gate Avenue, San
17 Francisco, California 94102. Counsel who will try the case
18 shall appear at the Settlement Conference with the party
19 principals who met earlier. The negotiations will be
20 principally among the party principals in my presence.

21 Each party shall prepare a Settlement Conference
22 Statement, which must be served on opposing counsel and lodged
23 (not faxed) with my chambers no later than seven calendar days
24 prior to the conference. The Statement shall **not** be filed with
25 the Clerk of the Court. The Statement **may** be submitted on CD-
26 ROM with hypertext links to exhibits. Otherwise, the portion
27 of exhibits on which the party relies **shall** be highlighted.
28 The Settlement Conference Statement shall not exceed ten pages

1 of text and twenty pages of exhibits and shall include the
2 following:

3 1. A brief statement of the facts of the case.
4 2. A brief statement of the claims and defenses
5 including, but not limited to, statutory or other grounds upon
6 which the claims are founded.

7 3. A summary of any related litigation.

8 4. A summary of the proceedings to date and any pending
9 motions.

10 5. An estimate of the cost and time to be expended for
11 further discovery, pretrial and trial.

12 6. The relief sought, including an itemization of
13 damages.

14 7. The parties' position on settlement, including
15 present demands and offers and a history of past settlement
16 discussions. The Court's time can best be used to assist the
17 parties in completing their negotiations, not in starting them.
18 So there is no confusion about the parties' settlement
19 position, plaintiff must serve a demand in writing no later
20 than fourteen days before the conference and defendant must
21 respond in writing no later than eight days before the
22 conference. The parties are urged to carefully evaluate their
23 case before taking a settlement position since extreme
24 positions hinder the settlement process.

25 Along with the Statement each party shall lodge with the
26 court a document of no more than three pages containing a
27 **candid** evaluation of the parties' likelihood of prevailing on
28 the claims and defenses, and any other information that party

1 wishes not to share with opposing counsel. The more candid the
2 parties are, the more productive the conference will be. This
3 document shall not be served on opposing counsel.

4 It is not unusual for conferences to last three or more
5 hours. Parties are encouraged to participate and frankly
6 discuss their case. Statements they make during the conference
7 will not be admissible at trial in the event the case does not
8 settle. The parties should be prepared to discuss such issues
9 as:

- 10 1. Their settlement objectives.
- 11 2. Any impediments to settlement they perceive.
- 12 3. Whether they have enough information to discuss
13 settlement. If not, what additional information is needed.
- 14 4. The possibility of a creative resolution of the
15 dispute.

16 The parties shall notify chambers immediately if this case
17 settles prior to the date set for settlement conference.
18 Counsel shall provide a copy of this order to each party who
19 will participate in the conference.

20 Dated: August 11, 2005



Bernard Zimmerman
United States Magistrate Judge